

## **103 KAR 16:200. Consolidated Kentucky corporation income tax return.**

RELATES TO: KRS 141.200

STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary for the proper administration of KRS Chapter 141. This administrative regulation establishes terms, forms, and procedures required for the implementation of KRS 141.200, with respect to elective consolidated returns.

Section 1. Definitions. (1) "Combined return" means a Kentucky corporation income tax return by which Kentucky taxable income is reported and attributed to members of a unitary business group using the unitary business concept.

(2) "Common parent corporation" means the member of an affiliated group:

(a) That directly owns stock meeting the requirements of Section 1504(a)(2) of the Internal Revenue Code, 26 U.S.C. 1504(a)(2), in at least one (1) other member of the affiliated group; and

(b) Whose stock is not owned directly by any other member of the affiliated group as required by Section 1504(a)(2) of the Internal Revenue Code, 26 U.S.C. 1504(a)(2).

(3) "Election period" is defined by KRS 141.200(2)(e).

(4) "Exempt from taxation" means the corporations listed in KRS 141.040(1)(a) through (h).

(5) "Unitary business concept" means a method of determining taxable income within a state based on the unitary business group's activities within that state.

(6) "Unitary business group" means a group of related corporations which share or exchange value as evidenced by the existence of the following characteristics:

(a) The operation of one (1) corporation is dependent upon, or contributes to, the operation of another corporation;

(b) There is a unity of ownership, operation, and use among the corporations; or

(c) The corporations exhibit functional integration, centralization of management, and economies of scale.

Section 2. Election to File a Consolidated Return. (1) General rule.

(a) An election to file a consolidated return shall be made by the common parent corporation on behalf of all members of the affiliated group by filing "Election to File Consolidated Kentucky Corporation Income Tax Return", Revenue Form 722, on or before the date prescribed by KRS 141.160 for filing the return, or as extended pursuant to KRS 141.170, for the first taxable year for which the election is made.

(b) Except as provided by subsections (2) and (3) of this section, if "Election to File Consolidated Kentucky Corporation Income Tax Return", Revenue Form 722, is not filed within the period prescribed by paragraph (a) of this subsection:

1. An affiliated group shall be deemed not to have made an election; and

2. Each member of the affiliated group subject to tax pursuant to KRS 141.040 shall file a separate return pursuant to KRS 141.200(3) for taxable years that begin prior to January 1, 2005.

(2) Transition rules.

(a) For a taxable year beginning prior to December 31, 1995 and ending on or after December 31, 1995, if an affiliated group filed a consolidated return and did not file "Election to File Consolidated Kentucky Corporation Income Tax Return", it may elect to file a consolidated re-

turn beginning with the taxable year if it mails "Election to File Consolidated Kentucky Corporation Income Tax Return" no later than February 15, 1998, to the Department of Revenue, Corporation Tax Section, P.O. Box 1302, Frankfort, Kentucky 40602-1302.

(b) For a taxable year ending on or after December 31, 1995, and prior to April 5, 1996, if the members of an affiliated group filed separate returns or a combined return, the affiliated group:

1. May elect to file a consolidated return beginning with the taxable year by filing "Election to File Consolidated Kentucky Corporation Income Tax Return", no later than February 15, 1998; and

2. Shall file a consolidated return amending the separate or combined returns no later than February 15, 1998.

(3) Taxable years following an election period.

(a) Except as provided in paragraphs (b) and (d) of this subsection, for any taxable year beginning after the expiration of the election period that ends prior to January 1, 2005, each member of the affiliated group subject to Kentucky corporation income tax in accordance with KRS 141.040 shall file a separate return unless the affiliated group elects to file a consolidated return on, or prior to, the due date of the return due for a taxable year that ends prior to January 1, 2005.

(b) The filing of a consolidated return on or before the date prescribed by KRS 141.160 for filing the return, or as extended pursuant to KRS 141.170 for the first taxable year that begins after the expiration of an election period, shall:

1. Constitute a new election to file a consolidated return; and
2. Establish a new election period.

(c) If the expiration of an election period occurs because an affiliated group ceases to exist, each member of the affiliated group subject to Kentucky corporation income tax in accordance with KRS 141.040 shall file a separate return beginning with the first taxable year immediately following the date the affiliated group ceases to exist unless it becomes a member of another affiliated group which has elected to file a consolidated return.

(d) Any election period that expires after January 1, 2005 shall result in the members of the affiliated group being subject to the provisions of KRS 141.200(9) to (14).

(4) Effect of an election.

(a) An election to file a consolidated return shall be an irrevocable election binding on both the cabinet and the affiliated group for the election period.

(b) The administrative provisions of 26 C.F.R. 1.1502-75(a) to (c) shall not apply for Kentucky purposes.

Section 3. Corporations Included in a Consolidated Return. (1) If a consolidated federal return is filed. If a member of the affiliated group electing to file a consolidated Kentucky return pursuant to Section 2 of this administrative regulation is included in a consolidated federal return for the taxable year, the Kentucky return shall include the corporations that:

- (a) Were included in the consolidated federal return for the taxable year; and
- (b) Are not exempt from taxation.

(2) If a consolidated federal return is not filed. If no member of an affiliated group electing to file a consolidated Kentucky return pursuant to Section 2 of this administrative regulation is included in a consolidated federal return for the taxable year, the Kentucky return shall include the members of the affiliated group as defined in Section 1504(a) of the Internal Revenue Code, 26 U.S.C. 1504(a), and related federal regulations that are not exempt from taxation.

Section 4. Carryover or Carryback of Items of Loss, Deduction or Credit. (1) Carryover or

carryback between a separate return and a consolidated return. If a separate return was filed for taxable years prior to the taxable years for which a consolidated return is filed, and a carryover or carryback occurs between the separate return and the consolidated return, the carryover or carryback amount shall be:

(a) Limited as provided by Section 1502 of the Internal Revenue Code, 26 U.S.C. 1502, and related federal regulations; and

(b) Adjusted for the differences between KRS Chapter 141 and the Internal Revenue Code.

(2) Carryover or carryback between a combined return and a consolidated return.

(a) A combined return shall be deemed a consolidated return for the purpose of determining a carryover or carryback amount, if a:

1. Combined return using the unitary business concept was filed for taxable years ending on or before December 30, 1995;

2. Consolidated return is filed for taxable years ending on or after December 31, 1995; and

3. Carryover or carryback occurs between the combined return and the consolidated return.

(b) The carryover or carryback amount shall be:

1. Limited as provided by Section 1502 of the Internal Revenue, 26 U.S.C. 1502, Code and related federal regulations; and

2. Adjusted for the differences between KRS Chapter 141 and the Internal Revenue Code.

Section 5. Deferred Intercompany Transactions. If, during a year when a separate or combined return was filed, a gain or loss on a deferred intercompany transaction was deferred for federal purposes, and was not deferred for Kentucky purposes, the gain or loss, when recognized for federal purposes, shall be adjusted for Kentucky purposes to reflect the prior reporting of the transaction.

Section 6. Corporation Income Tax Computation for Taxable Years Beginning on or After January 1, 2005 During the Ninety-Six (96) Month Election Period. For taxable years beginning on or after January 1, 2005, the amendments to KRS 141.040 enacted by 2005 Ky. Acts ch. 168 shall apply to the computation of the tax due under KRS 141.040 for the affiliated group.

Section 7. Required Forms. (1) "Kentucky Corporation Income Tax Return", Revenue Form 720, shall be filed as required by 103 KAR 1:050, including with all applicable schedules, and shall contain the following:

(a) Information identifying the affiliated group;

(b) The taxable income computation;

(c) The income tax computation;

(d) The license tax computation for tax periods ending prior to December 31, 2005;

(e) The tax payment summary; and

(f) The signature of a principal officer or chief accounting officer.

(2) "Kentucky Corporation Income Tax Return", Revenue Form 720, Schedule A, Apportionment and Allocation, shall be attached to Revenue Form 720, if applicable, and shall contain the:

(a) Computation of the apportionment fraction;

(b) Apportionment and allocation of income;

(c) Beginning and end of year balances of Kentucky real and tangible property; and

(d) Beginning and end of year balances of total real and tangible property.

(3) "Kentucky Affiliations and Payment Schedule", Revenue Form 851-K, shall be attached to "Kentucky Corporation Income Tax Return", Revenue Form 720, and shall contain the:

(a) Name of each member of the affiliated group subject to Kentucky corporation license tax

pursuant to KRS 136.070;

(b) Six (6) digit Kentucky Account Number for each corporation listed pursuant to paragraph (a) of this subsection; and

(c) Amount remitted for each corporation.

(4)(a) A copy of the Federal Form 7004, "Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns", or "Application for Six (6) Month Extension of Time to File Kentucky Corporation Income Tax Return", Revenue Form 41A720SL, shall be filed to obtain an extension of time to file "Kentucky Corporation Income Tax Return", Revenue Form 720, pursuant to the provisions of KRS 131.081(11), 131.170 and 141.170. Revenue Form 41A720SL shall contain the:

1. Name of each member of the affiliated group subject to Kentucky corporation license tax pursuant to KRS 136.070;

2. Six (6) digit Kentucky Account Number for each corporation listed pursuant to subparagraph 1. of this paragraph; and

3. Amount remitted for each corporation.

(b) An application for extension filed pursuant to paragraph (a) of this subsection shall constitute an extension for each member of the affiliated group subject to Kentucky corporation license tax pursuant to KRS 136.070.

Section 8. Filing a Consolidated Return. "Kentucky Corporation Income Tax Return", Revenue Form 720, shall be filed as required by 103 KAR 1:050, including with all applicable schedules, and shall:

(1) Be filed by the common parent corporation for the affiliated group; and

(2) Contain the following forms, if applicable, attached in the following order:

(a) "Election to File Consolidated Kentucky Corporation Income Tax Return", Revenue Form 722;

(b) "Kentucky Affiliations and Payment Schedule", Revenue Form 851-K;

(c) "Kentucky Corporation Income Tax Return," Revenue Form 720, Schedule A "Apportionment and Allocation Schedule";

(d) A copy of pages 1 and 4 of Federal Form 1120, U.S. Corporation Income Tax Return;

(e) Federal Form 851, Affiliations Schedule;

(f) Forms necessary to support credits reported on the consolidated return;

(g) The schedules of gross income and deductions for each member of the affiliated group prepared in columnar form in accordance with 26 C.F.R. 1.1502-76;

(h) Balance sheets for each member of the affiliated group prepared in columnar form in accordance with 26 C.F.R. 1.1502-76;

(i) The schedules of receipts, property and payroll for each member of the affiliated group shall be prepared in columnar form; and

(j) A copy of "Application for Six (6) Month Extension of Time to File Kentucky Corporation Income Tax Return", Revenue Form 41A720SL or a copy of Federal Form 7004, Application for Automatic 6-Month Extension of Time To File Certain Business Income Tax, Information, and Other Returns.

Section 9. Method of Filing a Kentucky License Tax Return. (1) If the common parent corporation is subject to Kentucky license tax pursuant to KRS 136.070 for tax periods that end prior to December 31, 2005, "Kentucky Corporation Income Tax Return", Revenue Form 720, reporting the consolidated return computation shall report the separate Kentucky license tax computation for the common parent corporation.

(2) If a member of the affiliated group other than the common parent corporation is subject

to Kentucky license tax pursuant to KRS 136.070, a separate "Kentucky Corporation Income Tax Return", Revenue Form 720, reporting the license tax computation, shall be submitted with, but not attached to, the consolidated return submitted by the common parent corporation.

(3) If the common parent corporation qualifies and elects the consolidated license tax provision of KRS 136.071, "Kentucky Corporation Income Tax Return", Revenue Form 720, shall report the consolidated income tax computation for the members of the affiliated group and the consolidated license tax computation for those corporations that are considered as one (1) pursuant to KRS 136.071.

(4) If a member of the affiliated group other than the common parent corporation qualifies and elects the consolidated license tax provision of KRS 136.071, "Kentucky Corporation Income Tax Return", Revenue Form 720, shall:

(a) Report the consolidated license tax computation for those corporations that are considered as one (1) pursuant to KRS 136.071; and

(b) Be submitted with, but not attached to, the consolidated return submitted by the common parent corporation. (23 Ky.R. 3645; Am. 24 Ky.R. 59; eff. 7-16-97; 32 Ky.R. 1720; 33 Ky.R. 64; eff. 8-7-2006.)